

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

MAY - 2 2001

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 4977

DATE COMPLAINT FILED: February 24, 2000

DATE OF NOTIFICATION: March 2, 2000

DATE ACTIVATED: September 21, 2000

EXPIRATION OF THE STATUTE OF

LIMITATIONS: September 19, 2000 - September 30, 2001

STAFF MEMBER: Jamila I. Wyatt

COMPLAINANT: Stephen Marks

RESPONDENTS: See Appendix A<sup>1</sup>

RELEVANT STATUTES:

- 2 U.S.C. § 441a(a)(1)(A)
- 2 U.S.C. § 441a(f)
- 2 U.S.C. § 441f
- 26 U.S.C. § 9034(a)
- 26 U.S.C. § 9038(a)
- 11 C.F.R. § 100.7
- 11 C.F.R. § 110.4(b)
- 11 C.F.R. § 114.1(a)(1)
- 11 C.F.R. § 9003.3(a) and (b)(6)
- 11 C.F.R. § 9034.2
- 11 C.F.R. § 9034.3(j)
- 11 C.F.R. § 9034.4(b)(4)
- 11 C.F.R. § 9038.2(a)(4)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

<sup>1</sup> Because of the large number of respondents named in this case, each individual will not be listed in the recommendation section. Rather, the recommendation will reference respondents listed in Appendix A.

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**I. GENERATION OF THE MATTER<sup>2</sup>**

This matter was generated by a complaint filed on February 24, 2000 by Stephen Marks ("Complainant") setting forth several allegations against Buchanan for President, Inc. (the "Committee"). See Attachment 1. The Complainant asserts that the Committee knowingly accepted contributions made in the name of another. The Complainant also alleges the Committee directed campaign staffers to convert cash contributions made to the Committee from various individuals into checks and money orders, and forge missing information on contribution checks from individual contributors in order to make the contributions eligible for matching.<sup>3</sup>

Another allegation made by the Complainant is that individuals made contributions in excess of the \$1,000 limit, and the Committee attempted to circumvent the contribution limit by transferring these excessive contributions into the 1992 Buchanan Compliance Fund.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. THE LAW**

A contribution includes a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing the result of a Federal Election. 2 U.S.C. § 431(8)(A). A matchable contribution is a gift of money made by an

<sup>2</sup> This Office notes that Patrick Buchanan is named as a respondent in four other pending matters: MURs 5045, 5067, 5068, and 5081. These MURs are unrelated to the matters discussed in this Report.

<sup>3</sup> On June 16, 1998, the Commission opened an inquiry pursuant to 26 U.S.C. § 9039(b) and 11 C.F.R. § 9039.3 to determine whether *inter alia*, the Committee owed a repayment for matching funds it received for non-matchable contributions. The Commission's inquiry into the Committee's matched contributions was conducted after the Commission identified a number of contributions that were improperly reattributed and submitted for matching. See Buchanan Statement of Reasons, September 14, 2000. *Id.* As a result of the investigation, the Commission determined that the Committee must repay \$63,750 to the United States Treasury for matching funds received in excess of the candidate's entitlement for matched contributions later determined to have been non-matchable. See Buchanan Statement of Reasons, September 14, 2000. However, any additional repayment determination for the payments made on the basis of matched contributions later determined to be non-matchable cannot be pursued since the 3 year notification period for seeking a repayment from the Committee expired on August 15, 1999. See 11 C.F.R. § 9038.2(a)(2).

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individual, by a written instrument, for the purpose of influencing the result of a primary election. 26 U.S.C. § 9034(a). A check written on a personal, escrow or trust account representing or containing the contributor's personal funds is a matchable contribution. A money order, or any other negotiable instrument is matchable. 11 C.F.R. § 9034.2(b).<sup>4</sup> However, contributions of currency are not matchable. 11 C.F. R. § 9034.3(j).

The Federal Election Campaign Act of 1971, as amended (the "Act") provides that no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another. 2 U.S.C. § 441f. *See also* 11 C.F.R. § 110.4(b)(1).

Additionally, the Act provides that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A). A political committee is prohibited from knowingly accepting contributions in excess of the \$1,000 limit. 2 U.S.C. § 441a(f).

## **B. CONTRIBUTIONS IN THE NAME OF ANOTHER<sup>5</sup>**

### **1. Converting Cash Contributions to Checks and Money Orders**

According to the Complainant, the Committee received cash contributions from various contributors and converted these cash contributions into money orders and personal checks issued by campaign staffers. Attachment 1, at 1. The Complainant asserts that the cash contributions that were converted to money orders and personal checks by campaign staffers were then credited as contributions by the staffers rather than the original cash contributors. *Id.*

<sup>4</sup> The written instrument shall contain the full name, signature and address of the contributor(s) and the amount and date of the contribution. 11 C.F.R. § 9034.2(c).

<sup>5</sup> The statute of limitations for the allegation of making and receiving a contribution in the name of another ranges from September 19, 2000 through April 20, 2001.

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The Complainant also notes that campaign staffer Elise Frechette made 11 contributions from October 30, 1995 through November 21, 1995, in amounts ranging from \$2 to \$150.<sup>6</sup> Attachment 1, at 2-3. The Complainant states that these small contributions could represent cash contributions that were converted to checks by Ms. Frechette, rather than contributions by Ms. Frechette. Attachment 1, at 3.

<sup>6</sup> The Complainant states that Ms. Frechette made the following contributions to the Committee: \$11 on October 30, 1995; \$5 on October 26, 1995; \$21 on October 31, 1995; \$7 on November 1, 1995; \$2 on November 3, 1995; \$7 on November 6, 1995; \$5 on November 13, 1995; \$3 on November 16, 1995; \$6 on November 16, 1995; \$47 on November 20, 1995; and \$150 on November 21, 1995. The contributor index shows that Ms. Frechette made contributions totaling \$244.

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With respect to the contributions made by Elise Frechette, this Office does not believe the Complainant sets forth any evidence that she made contributions in the name of another. Absent any additional information, the fact that Ms. Frechette made several contributions of small dollar amounts is not indicative of a violation.<sup>14</sup> Therefore, the Office of General Counsel recommends the Commission find no reason to believe Elise Frechette violated 2 U.S.C. § 441f or 11 C.F.R. § 110.4(b)(1)(i).

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<sup>14</sup> Ms. Frechette did not respond to the allegations raised in the Complaint.

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**C. EXCESSIVE CONTRIBUTIONS<sup>15</sup>**

The Complainant alleges that the Committee received excessive contributions from individuals, and that the excessive portions of the individual contributions were improperly deposited into the 1992 Buchanan Compliance Fund ("Compliance Fund") by the Committee.<sup>16</sup> Attachment 1, at 4. The Complainant asserts that the Committee may not have received the necessary authorization from the contributors to redesignate the excessive portion of their contribution to the Compliance Fund. Attachment 1, at 4. In addition, the Complainant charges that all of the contributions to the Compliance Fund should be investigated since the excessive

<sup>15</sup> The statute of limitations for the allegation of circumventing the contribution limit by transferring excessive contributions into the 1992 Buchanan Compliance Fund ranges from October 10, 2000 through September 30, 2001

<sup>16</sup> The Complainant does not identify the alleged excessive contributors, nor does the Complainant state the amounts of the excessive contributions. The Office of General Counsel is unable to determine the statute of limitations related to the excessive contributions allegation because no specific contributors are named in the complaint.

portions of individual contributions "may have been laundered into Buchanan's 1992 Compliance Fund as a way of avoiding the \$1,000 [contribution] limit." *Id.*

The Committee asserts that "the Committee had procedures in place to ensure that excess contributions were either refunded to contributors, or reattributed or redesignated according to contributors' wishes." Attachment 2 at 4. In addition, the response notes that "any general failure to obtain redesignations for excessive campaign contributions would have been uncovered and addressed by the FEC's Audit Division in its extensive audit of the 1996 campaign." *Id.*

One hundred-ten individuals were sent notification letters of the complaint. Most of the individuals named in the complaint contributed to Buchanan for President, Inc. and the 1992 or 1996 Buchanan Compliance Fund.<sup>17</sup> Based on a review of those contributors who submitted a written response to the complaint, none of them claim to have had their excessive contributions redesignated to the Compliance Fund by the Committee without their knowledge. In fact, several respondents acknowledge either receiving contribution refunds from the Committee or granting the Committee permission to redesignate the excessive portion of their contribution to the Compliance Fund.

The Commission has already addressed the issue of whether the Committee properly redesignated contributions to the Compliance Fund in another enforcement matter. See MUR 4918.<sup>18</sup> In MUR 4918, the Audit staff noted that certain refund checks were endorsed by the payees and then deposited into the Compliance Fund. A total of \$67,320 in refund checks were

<sup>17</sup> Most of the individual respondents were not named in the subject complaint. However, all of the respondents were noted in the attachments to the Complaint. Therefore, they are listed as respondents in this matter.

<sup>18</sup> MUR 4918 was generated from information obtained in the course of conducting the audit of the 1996 Buchanan Committee pursuant to 26 U.S.C. § 9038(a). MUR 4918 addressed excessive contributions that were redesignated to the 1992 Compliance Fund and the 1996 Compliance Fund.

endorsed by the payees and then deposited into the 1992 Compliance Fund account from October 10, 1995 through September 30, 1996.<sup>19</sup> In MUR 4918, the Commission did not find reason to believe that the excessive contributions were improperly redesignated to the Compliance Fund.<sup>20</sup>

In addition, the Commission has already conducted a thorough examination of the Committee's contributions that were in excess of the statutory limitations, and made no finding in the context of the audit, as it relates to the Committee improperly transferring excessive contributions to the Compliance Fund.<sup>21</sup> See Report of the Audit Division on Buchanan for President, Inc. (January 14, 1999).

The Commission has already examined the excessive contributions that were redesignated to the Compliance Fund, and made various findings as it relates to the Compliance Fund.<sup>22</sup> There is no information in the Complaint that warrants an additional examination of these issues. Therefore, the Office of General Counsel recommends the Commission find no reason to believe the Committee or any of the named respondents violated any provision of the Act as it relates to this allegation.

<sup>19</sup> In MUR 4918, the Committee sent checks to the excessive contributors refunding the excessive portion of their contributions. Enclosed with the refund checks was a letter asking the contributor to redesignate the excessive portion of the contribution to the Compliance Fund rather than accepting a refund of the excessive portion of the contribution. The Commission did not make any findings against Buchanan for President, Inc.

<sup>20</sup> In MUR 4918, the Commission determined that funds deposited into the Compliance Fund account were subject to the contribution limits set forth in the Act. Based on a review of all the refund checks that were redesignated to the Compliance Fund, the Commission identified three excessive contributors to the Compliance Fund. Therefore, the Commission found reason to believe the 1992 Buchanan Compliance Fund received excessive contributions, but took no further action against the Compliance Fund. The Commission did not make any findings with respect to these contributors.

<sup>21</sup> The Audit Report contained a finding on the receipt of cash contributions in excess of the limitation. The Commission did not require a disgorgement to the United States Treasury because the Committee refunded the excessive contributions, albeit untimely.

<sup>22</sup> Forty-six of the individual contributors named as respondents in the subject complaint made excessive contributions to the Committee that were subsequently redesignated to the Compliance Fund and examined in MUR 4918.

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**III. RECOMMENDATIONS**

6. Find no reason to believe Elise Frechette violated 2 U.S.C. § 441f or 11 C.F.R. § 110.4(b)(1)(i).

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10. Find no reason to believe any of the named respondents in Appendix A violated 2 U.S.C. §§ 441a(a)(1)(A) or 441a(f).
11. Close the file.
12. Approve the appropriate letters.

5/2/01  
Date

  
Lois G. Lerner  
Acting General Counsel

Attachments

1. Complaint from Stephen Marks dated February 24, 2000
2. Responses to Complaint

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